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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,848	01/18/2002	Carine Nizard	24795	7105

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EXAMINER	
KANTAMNENI, SHOBHA	
ART UNIT	**PAPER NUMBER**
1617	

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	09/937,848	NIZARD ET AL.	
	Examiner	Art Unit	
	Shobha Kantamneni	1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 November 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ they raise the issue of new matter (see Note below);
   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
   NOTE: _____.
3. ☒ Applicant's reply has overcome the following rejection(s): see page 2.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: 94-113.

   Claim(s) withdrawn from consideration: _____.
8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____
10. ☐ Other: _____

SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Continuation of 3: Applicant's Amendment has overcome claim rejection under 35 USC 112 , second paragraph.

Continuation of 7: The rejection of claims 94-113 under 35 USC 103(a) as being unpatentable over Briand (English Translation of FR 2,657,012) in view of WInget (5,767,095) is MAINTAINED for reasons set forth in the Final Office Action mailed 06/03/04, and those found below.

Applicant argues that, "Applicant discussed the differences between the Briand hydroalcoholic extracts and the claimed lipid extracts during the interview. However, to reiterate those points, Applicant submit that the extracts obtained by Brian's hydroalcoholic extraction process are very different from the lipid extracts claimed in claim 94. In particular, the hydroalcoholic extract of Briand conatins a majority of hydrophilic constituents, while the lipid extract as claimed contains a majority of lipophilic constituents". This argument is not persausive. Examiner respectfully points out that the hydroalcoholic extract of Briand will contain the constituents of the lipid extract of the instant invention.

Applicant argues that ,"Briand indicates that the hydroalcoholic extracts have an activity against free radicals. In contrast, the claimed lipid extracts are useful in promoting intercellular communication.... By enhancing the gap junction communication between cells, the claimed lipid extracts are acting on the cells themselves, and not on free radicals that may be present around the cells. Thus, Applicants, submit that the claimed mechanism is very different than the mechanism disclosed in Briand". This argument is not persuasive. Examiner respectfully points out 1)The claims are directed to a method of applying a composition comprising a lipid extract of the alga skeletonema. As mentioned above the hydroalcoholic composition of Briand will contain the constituents of lipid extract of instant invention. Thus the prior art composition inherently promotes intercellular communication of skin cells, as instant claimed. 2) the compound and its properties are inseparable. When the same composition is applied to skin it will not only act on free radicals but it will also promote intercelluar communication of skin cells, no matter what mechanism it goes through.

Applicant argues that , "Winget does not apply to the present claims for the following reasons: 1) Winget is directed to anti-inflammation and the present claims are directed to the promotion of intercellular communication; 2) Winget is concerned with the MDGD-EPA present in the algal extracts since the MGDG-EPA concentration is important for the anti-inflammatory properties; and 3) Skeletonema is mentioned only in a long list of possible algae". This argument is not persuasive. Examiner respectfully points out that the Applicant is arguing against an individual reference when the rejections are based on combination of references.

Applicant argue's that, there is no motivation or teachings to combine the references, Briand reference which is concerned with free radical scavenging, while Winget is directed to anti-inflammation. Applicant argue's that the treatment of aging skin via free radical scavenging has nothing to do with a pharmaceutical composition used for treating inflammation , and thus there is no mativation to combine references. This argument is not persuasive. Winget reference is used to show that a composition containing a purified microalgal (such as Skeletonema) lipid preparation is used for the application to the skin. Briand's hydroalcoholic alga Skeletonoma encompasses Winget's purified Skeletonema (microalgal) lipid extract. Thus it is obvious to one of ordinary skill in the art at the time the invention was made to use a purified Skeletonema lipid extract of Winget to achieve a product that treats skin aging.